

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition of EDWARD SPURLOCK dba SPURLOCK'S GENERAL  
CABINET for Redetermination under the Sales and Use Tax Law*

*Appearances:*

<i>For Petitioner:</i>	Mr. Abe Golomb Consultant
<i>For Business Taxes Appeals Review Section:</i>	Mr. Donald J. Hennessy Assistant Chief Counsel
<i>For Sales and Use Tax Department:</i>	Dennis Fox Supervising Tax Auditor

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination of use tax of \$570.16 which was heard, taken under consideration, and later decided by the Board on January 12, 1993, in Sacramento, California.

Petitioner is a maker of wooden cabinets and desks. Desks and some cabinets, were sold without installation; however, under lump-sum construction contracts, petitioner installed most of the cabinets he sold.

Petitioner made sixteen (16) purchases during the audit period, from one California seller of lumber that went into the cabinets and desks. At or near the time of the first purchase, petitioner issued to the seller a resale certificate (copy attached) in the pre-printed form suggested in Sales and Use Tax Regulation 1668(b). Petitioner wrote the following entries in blanks on the resale certificate:

1. His firm name, Spurlock's General Cabinet.
2. His valid seller's permit number.
3. His signature.
4. His address.
5. His telephone number.
6. The date of the certificate.

The pre-printed portion of the resale certificate signed by petitioner stated in part, that:

“ . . . in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay for the tax, measured by the purchase price of such property.”

Petitioner made no entries, but left blank, the spaces on the resale certificate provided for the following:

1. The description of petitioner's business.
2. The name of the seller.
3. The description of the property to be purchased.
4. The location at which petitioner signed the certificate.

Given the above facts, the Sales and Use Tax Department's audit concluded that petitioner owed use tax on the purchases of the lumber consumed by petitioner in performing lump sum contracts to furnish and install nonprefabricated cabinets. Petitioner contended that only the seller is liable for (sales) tax on the sales of lumber consumed by petitioner. Petitioner further argues that he is not liable for (use) tax on the purchases as the resale certificate was invalid because it did not include all of the elements required for a valid resale certificate pursuant to Revenue and Taxation Code section 6093 and Regulation 1668(b).

Given the above facts, the Board concluded that petitioner is liable for use tax on the purchases. The petitioner cannot first issue a resale certificate to the seller and then deny the validity of the resale certificate. Under Revenue and Taxation Code section 6244(a), by issuing the resale certificate, the petitioner represented to the seller that he was purchasing property for the purpose of reselling it.

Done at San Diego, California, this 29th day of June, 1993.

Brad Sherman, Chairman  
Matthew K. Fong, Member  
Ernest J. Dronenburg, Jr., Member  
Windie Scott, Member  
Attested by: Burton W. Oliver, Executive Director